

MINUTES

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

HON. CHARLES S. COODY, MAG JUDGE AT Montgomery, Alabama

DATE COMMENCED: 11/16/06 AT 3:11 p.m. to 5:55p.m.

DATE COMPLETED: 11/16/06 TO Digital Recorded

UNITED STATES OF AMERICA

VS.

MICHAEL D. HARVEY

Defendant

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CASE NO. 1:06CR-107-MHT

GOVERNMENT

APPEARANCES:

DEFENDANT

Atty. Verne Speirs

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Atty. Kevin Butler

COURT OFFICIALS PRESENT:

Court Room Deputy: Wanda Stinson

Law Clerk: Wynn D Allen

Court Reporter: Mitchell Risner

() NON-JURY TRIAL

(X) OTHER PROCEEDINGS: EVIDENTIARY HEARING RE: MOTION TO SUPPRESS

SEE MINUTES ATTACHED

LOG OF PROCEEDINGS ELECTRONICALLY RECORDED			
Description	Evidentiary hrg on Motion to Suppress - 06cr107-MHT		
Date	11/16/2006	Location	Courtroom 4B
Time	Speaker	Note	
3 :11:45 PM	Court	Court Convenes; parties present as noted;	
3 :12:02 PM	Court	Parties which the rule invoked; All person who are witness in this are excused to wait outside the courtroom until called to testify;	
3 :13:05 PM	Atty. Speirs	Calls Agent Ryan Bostain; witness is sworn and seated; Discussion of witness background; Discussion of the investigation of the defendant; Discussion of mental issues of the defendant and interview of the defendant; Discussion and review of Govt. Exh. #1; Move to admit Govt. Exh. #1;	
3 :24:11 PM	Court	It's admitted;	
3 :24:17 PM	Atty. Speirs	Cont'd testimony re: the parental consent for interview of juvenile form; Discussion and review of Govt's Exh. #2; Govt. moved to admit Govt.'s Exh. #2;	
3 :29:06 PM	Court	It's admitted;	
3 :29:08 PM	Atty. Speirs	Cont'd testimony re: execution of the Rights Waiver form;	
3 :36:33 PM			
3 :36:37 PM	Court	Questions as to verbally acknowledged;	
3 :36:38 PM	Witness	When I asked him if he understand his rights and he said yes;	
3 :36:38 PM	Court	That's all he said?	
3 :36:38 PM	Witness	Yes.	
3 :36:43 PM	Atty. Speirs	Cont's testimony;	
3 :36:51 PM	Atty. Speirs	Cont'd testimony;	
3 :37:37 PM	Court	Questions to witness;	
3 :37:37 PM	Court	Question to witness re: "he wrote the sentence", how did he tell deft what to write;	
3 :37:47 PM	Witness	Response;	
3 :37:54 PM	Court	Then what did he do?	
3 :37:56 PM	Witness	He wrote the statement;	
3 :37:58 PM	Court	Did he stop and ask you again what he had to write?	
3 :38:01 PM	Witness	Yes sir.	
3 :38:02 PM	Court	How many times?	
3 :38:02 PM	Witness	Believe he only asked once;	
3 :38:20 PM	Court	Did he ask you how to spell anything?	
3 :38:20 PM	Witness	No sir;	
3 :38:25 PM	Atty. Speirs	Cont'd testimony regarding the Rights waiver form; Discussion as to whether deft asked for help;	
3 :41:03 PM	Court	Question to witness re: "he read it out loud", he read the sentence?	
3 :41:04 PM	Witness	Yes sir;	
3 :41:04 PM	Court	Did he stumble or have any problems reading the words?	
3 :41:15 PM	Witness	I can't recall;	

3 :41:22 PM	Atty. Speirs	Cont'd testimony; Discussion as to interview procedures used; Discussion of Mr. Power leaving interview room; Discussion of incident and statements made in interview room; Discussion and review of Govt's Exh. 3 -sworn statment of deft; Govt' moves to admit Govt. Exh. #3;
3 :54:49 PM	Atty. Butler	No objection;
3 :54:49 PM	Court	It's admitted;
3 :54:54 PM	Atty. Speirs	Cont'd testimony; Discussion as to how agent secured information and confession from deft;
4 :11:36 PM	Atty. Butler	Cross - examination; Discussion of training of witness; Discussion of the interview of Mr. Harvey;
4 :16:30 PM	Atty. Speirs	Objection;
4 :16:36 PM	Atty. Butler	Response to objection;
4 :16:46 PM	Court	Discussion as to whether what he does now knows have any bearing on what he did at the time;
4 :17:14 PM	Atty. Butler	Continued testimony; Discussion of first contact with Deft. Harvey; Discussions of the execution of the interview /consent form; Discussion as to Mr. Power leaving the interview room;
4 :32:14 PM	Atty. Speirs	Objection to the term displeasure;
4 :32:15 PM	Court	Rephrase;
4 :32:15 PM	Atty. Butler	Cont'd testimony; Discussion that juveniles and children will some time give answers that will satisfy the interviewer;
4 :33:01 PM	Atty. Speirs	Objection;
4 :33:08 PM	Court	Response;
4 :34:13 PM	Atty. Butler	Response as to whether deft was given answers to satisfy the interviewer, that his statement is no longer voluntary , but a statement that is being solicited in order to end the interview;
4 :34:47 PM	Court	Response;
4 :35:13 PM	Atty. Butler	Cont'd testimony; Discussion as certain words that had to be explained to to deft;
4 :40:07 PM	Atty. Speirs	Re-direct;
4 :40:36 PM	Atty. Butler	Re-cross;
4 :41:28 PM	Court	Witness is excused;
4 :41:33 PM	Atty. Speirs	Calls Dr. Rodolfo Buigas; witness is sworn and seated; Discussion as to the evaluations for Mr. Harvey's IQ;
4 :51:14 PM	Atty. Butler	Cross - examination; Discussion of verbal score;
4 :55:20 PM	Court	Witness is excused;
4 :55:26 PM	Atty. Butler	Calls Mr. Stephen D. Harvey, Sr.; witness is sworn and seated; father of the defendant; Discussion of defts learning disability; Discussion of defts difficulty following instructions;
5 :10:12 PM	Atty. Speirs	Cross-examination;
5 :11:59 PM	Court	Witness is excused;
5 :12:01 PM	Atty. Butler	Calls Charlee Power; witness is sworn and seated; Mother of Deft - Michael Harvey; Discussion as to defts interaction with other children; Discussion as to deft following instruction at the age of 19;

5 :21:19 PM	Atty. Speirs	Cross-examination; Discussion of depts ability to put shocks on a big truck;
5 :23:04 PM	Atty. Butler	Re-direct;
5 :24:29 PM	Court	Witness is excused;
5 :25:31 PM	Court	Will take a short recess;
5 :37:09 PM	Court	Court reconvenes;
5 :37:11 PM	Atty. Butler	Calls John Power; witness is sworn and seated; step-father of the deft; Discussion of interview of the deft; Left the room at Deft's request;
5 :46:48 PM	Atty. Speirs	Cross-examination; Discussion as to of Govt's Exh. 1 - Parental Consent for Interview form; Discussion of the Rights waiver form;
5 :50:43 PM	Atty. Butler	Re-direct;
5 :52:29 PM	Court	Questions to witness re: deft's ability to understand and why leave the room when asked to do so by deft;
5 :52:56 PM	Witness	Response;
5 :53:16 PM	Court	Witness is excused;
5 :53:23 PM	Atty. Butler	Deft rest;
5 :53:31 PM	Court	Give parties opportunity to file additional briefs inlight of the evidence presented; How soon can we have a transcript of proceedings?
5 :53:59 PM	Atty. Butler	Oral request for transcript;
5 :54:01 PM	Mr. Mitchell	By next week;
5 :54:01 PM	Court	How soon next week;
5 :54:14 PM	Mr Mitchell	By Wednesday;
5 :54:14 PM	Court	Will set a deadline for filing briefs for the Nov. 27th; If the transcript isn't available in time to have ample time to file brief, you can request an extension;
5 :55:01 PM	Atty. Butler	Response;
5 :55:09 PM	Atty. Speirs	Would like briefs filed simultaneously?
5 :55:10 PM	Court	Yes; Court is recessed.